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13 STATE OF CALIFORNIA
14 STATE WATER RESOURCES CONTROL BOARD

15 In the Matter of the Petition of Los Angeles) PETITION FOR REVIEW OF LOS
16 Waterkeeper for Review of Action by the) ANGELES REGIONAL WATER
17 California Regional Water Quality Control) QUALITY CONTROL BOARD ACTION
18 Board, Los Angeles Region, in Adopting the) ADOPTING ORDER NO. R4-2022-XXXX
19 Waste Discharge Requirements and National) (NPDES PERMIT NO. CA0056227, CI No.
20 Pollutant Discharge Elimination System Permit) 5695)
21 for the City of Los Angeles, Donald C. Tillman)
22 Water Reclamation Plant, discharge to the Los)
23 Angeles River directly and via Lake Balboa,)
24 Wildlife Lake, Hayvenhurst Channel, Haskell)
25 Channel and Bull Creek; Order No. R4-2022-)
26 XXXX; NPDES Permit No. CA0056227; CI)
27 No. 5695)
28

1 In accordance with Section 13320 of the California Water Code and Section 2050 of Title
2 23 of the California Code of Regulations, Los Angeles Waterkeeper (“Petitioner” or “LA
3 Waterkeeper”) hereby petitions the State Water Resources Control Board (“State Board”) to
4 review the final decision of the California Regional Water Quality Control Board for the Los
5 Angeles Region (“Regional Board”) in adopting the Waste Discharge Requirements and
6 National Pollutant Discharge Elimination System Permit for the City of Los Angeles, Donald C.
7 Tillman Water Reclamation Plant discharge to the Los Angeles River directly and via Lake
8 Balboa, Wildlife Lake, Hayvenhurst Channel, Haskell Channel and Bull Creek, Order No. R4-
9 2022-XXXX, CI No. 5695, NPDES Permit No. CA0056227 (“Permit” or “Order”). The
10 Regional Board adopted the final order in this matter on December 8, 2022.

11 This Petition seeks to correct both substantive and procedural flaws in the Regional
12 Board’s December 8 approval of the Permit for the Donald C. Tillman Water Reclamation Plant
13 (“Tillman”) in Van Nuys, Los Angeles, California. The Regional Board approval was improper
14 because the Regional Board failed to execute its constitutional and statutory duties: (1) to fully
15 analyze whether and/or to what extent authorizing the continued discharge of tertiary treated
16 wastewater from Tillman into the Los Angeles River, directly and via several hydrologically
17 connected channels and lakes, constitutes a waste and unreasonable use of a water resource in
18 California, and/or (2) to fully analyze whether and/or to what extent that discharge is a
19 reasonable and beneficial use. In addition, despite the recognition that Tillman comprises part of
20 an “integrated network” of publicly-owned treatment works (“POTWs”) in the North Outfall
21 Sewer System, the Regional Board failed to analyze the cumulative impacts of the approval of
22 the Tillman Permit.

23 Further, the Regional Board failed to make findings or provide evidence that the approval
24 of the Tillman Permit is consistent with Article X, section 2 of the California Constitution and
25 the policies contained in Chapter 1 of the California Environmental Quality Act (“CEQA”),
26 despite the Board’s recognition that the Chapter 1 policies fully apply to the approval of the
27 Tillman Permit.

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1 **1. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS (IF**
2 **AVAILABLE) OF THE PETITIONER**

3 Los Angeles Waterkeeper
4 360 E 2nd Street, Suite 105
5 Los Angeles, CA 90012
6 Attention: Benjamin Harris, Staff Attorney (ben@lawaterkeeper.org)
7 Barak Kamelgard, Senior Attorney (barak@lawaterkeeper.org)
8 (310) 394-6162 x102 (Harris), x109 (Kamelgard)

9 **2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH**
10 **THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY**
11 **ORDER OR RESOLUTION OF THE REGIONAL BOARD**

12 Petitioner seeks review of Waste Discharge Requirements (“WDRs”) and National
13 Pollutant Discharge Elimination System (“NPDES”) Permit NO. CA0056227, CI NO.5695, and
14 Order R4-2022-XXXX, a copy of which is attached as Exhibit A.¹

15 **3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO**
16 **ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT**

17 December 8, 2022 (Exhibit A at p. 2).

18 **4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR**
19 **FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER**

20 In approving the Permit, the Regional Board failed to act in accordance with the
21 California Constitution, relevant governing law, and acted improperly and inappropriately, and
22 arbitrarily and capriciously. Specifically, but without limitation, the Regional Board:

23 A. Failed to consider the reasonableness of the ongoing discharge of tertiary treated
24 wastewater directly and indirectly into the Los Angeles River (as required by
25 Article X, Section 2 of the California Constitution and California Water Code
26 Section 100), resulting in a prejudicial abuse of discretion and in violation of law.

27 B. Failed to prevent the ongoing waste of water from Tillman in the form of tertiary
28 treated wastewater being discharged directly and indirectly into the Los Angeles
River from Tillman (as required by Article X, Section 2 of the California
Constitution and California Water Code Section 100), resulting in a prejudicial

¹ As of the date of this Petition, the Regional Board has not made the final Tillman Permit publicly available. Exhibit A is the Revised Tentative Permit adopted by the Regional Board, as modified during the hearing on December 8, 2022.

1 abuse of discretion and in violation of law.

2 C. Failed to adequately respond to factually and legally specific comments from LA
3 Waterkeeper and other public interest organizations, resulting in a prejudicial
4 abuse of discretion and in violation of law.

5 D. Improperly authorized waste and unreasonable use of a water resource in
6 California when it adopted the Permit, resulting in a prejudicial abuse of
7 discretion and in violation of law.

8 E. Improperly asserted that the Regional Board has no obligations under Article X,
9 Section 2 of the California Constitution and/or California Water Code Section 100
10 to consider the reasonableness or wastefulness of ongoing discharge of tertiary
11 treated wastewater from Tillman directly and indirectly into the Los Angeles
12 River, and making no findings regarding this issue, resulting in a prejudicial abuse
13 of discretion and in violation of law.

14 F. Improperly failed to make findings regarding cumulative impacts and the policies
15 contained in Chapter 1 of CEQA, resulting in a prejudicial abuse of discretion and
16 in violation of law.

17 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

18 Petitioner is a non-profit, environmental organization that has a direct interest in
19 protecting the quality of Los Angeles County's aquatic resources, including the Los Angeles
20 River, as well as the health of the public making beneficial use of the river. Petitioner is
21 dedicated to the preservation, protection, and defense of the coastal and inland surface and
22 ground waters of Los Angeles County from all sources of pollution and degradation, and
23 advocates that the Los Angeles area eventually wean itself completely from economically and
24 environmentally costly water imported and pumped over long distances, used once, treated, then
25 discharged into receiving waters (an outdated "pump and dump" approach to water
26 management). Petitioner represents members who live, consume water, and/or recreate in and
27 around the Los Angeles area, including the area around the Los Angeles River and Santa Monica
28 Bay.

1 Petitioner’s members and staff recreate in and around the waters to which the Permit
2 regulates discharges of treated wastewater. They are impacted by pollution in the wastewater
3 discharge and its resulting health impacts and by associated restrictions that prevent Petitioner
4 and other members of the public from fully enjoying the beneficial uses of the Los Angeles River
5 and Santa Monica Bay. In addition, Petitioner’s members and staff are negatively impacted by
6 California’s current economically and environmentally inefficient “pump and dump” approach to
7 water supply, of which Tillman and other POTWs in the North Outfall Sewer System are a
8 significant part.

9 Furthermore, Petitioner’s members and staff directly benefit from Los Angeles County
10 waters in the form of recreational swimming, surfing, diving, photography, birdwatching,
11 fishing, boating, and existence value, and would directly benefit from economically and
12 environmentally more sustainable locally developed water supplies. Petitioner’s members and
13 staff are aggrieved by the Regional Board’s action to approve the Permit because such action
14 likely authorizes the waste and unreasonable use of a water resource—perpetuating
15 unsustainable use of California water supplies. In addition, Petitioner’s members and staff are
16 aggrieved by the Regional Board’s action because the Regional Board has failed to comply with
17 its constitutional and statutory duties to consider whether the ongoing discharge of treated
18 wastewater from Tillman constitutes reasonable and beneficial use of a water resource; to
19 consider the cumulative impacts resulting from those ongoing discharges; and to consider
20 whether feasible mitigation or feasible alternatives exist that could substantially lessen the
21 environmental impact of those discharges. Though Petitioner submitted legally and factually
22 specific written and oral comments on these issues to the Regional Board, the Regional Board
23 failed to adequately respond to these comments, further harming Petitioner’s members and staff.

24 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
25 **PETITIONER REQUESTS**

26 Pursuant to Section 2050.6(b) of Title 23 of the California Code of Regulations,
27 Petitioner requests that the State Board conduct a hearing to consider testimony, other evidence,
28 and/or argument on the issues raised in this Petition. The contentions to be addressed at the

1 requested hearing are:

2 A. The California Constitution and the Water Code each impose a mandatory duty on
3 the Regional Board and/or the State Board to prevent the unreasonable use and
4 waste of the treated wastewater discharging from Tillman directly and indirectly
5 into the Los Angeles River and ultimately into the Pacific Ocean, and to consider
6 whether that water resource is put to reasonable and beneficial use.

7 B. The Regional Board failed to execute its constitutional and statutory mandatory
8 duties when it authorized the ongoing discharge of tertiary treated wastewater from
9 Tillman directly and indirectly into the Los Angeles River and ultimately into the
10 Pacific Ocean, without consideration of whether such discharge is a waste and
11 unreasonable use of a water resource in California.

12 C. The Regional Board failed to execute its statutory duties when it failed to consider
13 cumulative impacts of the ongoing discharge of treated wastewater directly or
14 indirectly into the ocean authorized in two recently approved WDRs and NPDES
15 permits for POTWs that are part of the North Outfall Sewer System, an integrated
16 network of Los Angeles area POTWs, and failed to consider whether approval of
17 the Permit was consistent with Chapter 1 of CEQA, especially whether feasible
18 mitigation or feasible alternatives exist that could substantially lessen the significant
19 environmental impacts of the approval of one or both of the two permits.

20 D. The State Board must execute the constitutional and statutory mandatory duties
21 described above to the extent the Permit is not remanded to the Regional Board for
22 that purpose.

23 The requested hearing is necessary because these contentions have not been adequately
24 considered by the Regional Board, as described in Section 7 below.

25 Pursuant to Section 2052(a)(2) of the Title 23 of the California Code of Regulations,
26 Petitioner also seeks an order by the State Board that:

27 A. Invalidates the Regional Board's approval of the Order and the Permit and remands
28 the matter to the Regional Board with instructions to amend the Permit to include

1 analysis and findings whether the continued discharge of tertiary treated wastewater
2 from Tillman directly and indirectly to the Los Angeles River and ultimately the
3 Pacific Ocean constitutes a waste and unreasonable use of water and/or whether that
4 water resource is being put to reasonable and beneficial use, after notice of public
5 comment on this issue.

6 B. Invalidates the Regional Board’s approval of the Order and the Permit and remands
7 the matter to the Regional Board with instructions to amend the Permit to include
8 analysis and findings regarding the cumulative impacts of the North Outfall Sewer
9 System, an integrated network comprised of Tillman, the two other POTWs
10 discharging into the Los Angeles River Watershed—the Burbank Water
11 Reclamation Plant (“Burbank”) and the Los Angeles-Glendale Water Reclamation
12 Plant (“LA-Glendale”)—and the Hyperion Water Reclamation Plant (“Hyperion”)
13 which discharges directly into the Pacific Ocean.

14 C. Invalidates the Regional Board’s approval of the Order and the Permit and remands
15 the matter to the Regional Board with instructions to amend the Permit to include
16 findings supported by substantial evidence regarding Chapter 1 of CEQA, including
17 the policies set forth in Public Resources Code Section 21002 that projects should
18 not be approved if feasible alternatives or feasible mitigation measures that would
19 substantially lessen the significant environmental effects resulting from the ongoing
20 discharge of treated wastewater from an integrated network of POTWs exist; or,
21 alternatively,

22 D. Vacates, amends, and/or replaces the Order and modifies the Permit to include
23 analysis and findings whether the continued discharge of tertiary treated wastewater
24 from Tillman directly and indirectly to the Los Angeles River and ultimately the
25 Pacific Ocean constitutes a waste and unreasonable use of water and/or whether that
26 water resource is being put to reasonable and beneficial use based on an analysis
27 conducted by the State Board, after notice and public comment on this issue. (*See*
28 23 C.C.R. § 2052(a)(2)(B) (providing that in acting on a petition the State Board

1 may set aside or modify the regional board order).)

2 E. Vacates, amends, and/or replaces the Order and modifies the Permit to include
3 analysis and findings regarding the cumulative impacts of the integrated North
4 Outfall Sewer System network comprised of Tillman, Hyperion, LA-Glendale, and
5 Burbank.

6 F. Vacates, amends, and/or replaces the Order and modifies the Permit to include
7 findings supported by evidence regarding Chapter 1 of CEQA, including the
8 policies set forth in Public Resources Code Section 21002 that projects should not
9 be approved if feasible alternatives or feasible mitigation measures exist that would
10 substantially lessen the significant environmental effects resulting from the ongoing
11 discharge of treated wastewater from the integrated network of POTWs and/or from
12 individual facilities.

13 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
14 **ISSUES RAISED IN THE PETITION**

15 **A. Factual and Procedural Background**

16 The City of Los Angeles (“City”) is the owner and operator of Tillman, which is a
17 POTW. (Exhibit A at p. F-3.) The Permit authorizes discharges of treated wastewater from
18 Tillman both directly and indirectly into the Los Angeles River, which ultimately flows to the
19 Pacific Ocean. Tillman has the capacity to handle wastewater inflow of 80 million gallons per
20 day (“MGD”). (Exhibit A at p. F-3.) On average, Tillman discharges between 30 MGD and 64
21 MGD of tertiary treated domestic and industrial wastewater, and about 20 MGD is discharged
22 directly into the Los Angeles River. (Exhibit A at pp. F-40, F-68.) The City currently uses
23 reclaimed water from Tillman to maintain the waterways and ponds of the Sepulveda Basin,
24 including the Japanese Garden, Lake Balboa, and Wildlife Lake. (See Exhibit A at p. F-6.) The
25 City is planning to reclaim 30,000 acre-feet per year (“AFY”) of water from Tillman by building
26 an advanced water purification treatment system with a 35 MGD capacity by 2025. (See Exhibit
27 A at pp. F-13, F-69.). The City currently is authorized to recycle up to 5.3 MGD of water from
28 Tillman for non-potable reuse and is planning to divert an additional 4,820 AFY of effluent that

1 currently flows into the Los Angeles River for additional treatment before being conveyed to
2 spreading grounds to recharge the San Fernando Groundwater Basin. (*See* Exhibit A at pp. F-68–
3 F-69; Exhibit B, Responses to Comments, at p. 50.) Further, Tillman is part of an integrated
4 network of Los Angeles area POTWs called the North Outfall Sewer System, which includes
5 Hyperion, Los Angeles-Glendale, and Burbank. (*See* Exhibit A at p. F-4.) This network of
6 treatment plants discharges treated wastewater into the Los Angeles River watershed,
7 contributing the vast majority of dry season flows to the river. (*See* Exhibit A at pp. F-6–F-7.)

8 On March 2, 2017, over LA Waterkeeper’s objections, the Regional Board adopted a
9 prior version of the WDR/NPDES permit for Tillman without analyzing whether the continued
10 discharge of tertiary treated wastewater from Tillman directly and indirectly to the Los Angeles
11 River and ultimately the Pacific Ocean constitutes a waste and unreasonable use of water and/or
12 whether that water resource is being put to reasonable and beneficial use. (Exhibit C, 2017
13 Tillman NPDES Permit.)

14 On March 28, 2017, LA Waterkeeper petitioned the State Board to vacate, amend, and or
15 replace the Regional Board’s Order approving the prior WDR/NPDES permit for Tillman and
16 modify the Permit to include analysis and findings whether the continued discharge of tertiary
17 treated wastewater from Tillman directly and indirectly to the Los Angeles River and ultimately
18 the Pacific Ocean constitutes a waste and unreasonable use of water and/or whether that water
19 resource is being put to reasonable and beneficial use. (*See* LA Waterkeeper, Petition for Review
20 of Los Angeles Regional Water Quality Control Board Action Adopting Order No. R4-2017-
21 0062 (NPDES Permit No. CA0056227, CI No. 5695) (Mar. 28, 2017).) The State Board took no
22 action on the Tillman petition, and the petition was dismissed by operation of law pursuant to
23 section 2050.5(e) of Title 23 of the California Code of Regulations on August 28, 2017.

24 On September 26, 2017, LA Waterkeeper filed a petition for writ of mandate in Los
25 Angeles Superior Court seeking to compel the Regional Board and/or the State Board to vacate,
26 amend, and or replace the Regional Board’s Order approving the prior WDR/NPDES permit for
27 Tillman and modify the Permit to include analysis and findings whether the continued discharge
28 of tertiary treated wastewater from Tillman directly and indirectly to the Los Angeles River and

1 ultimately the Pacific Ocean constitutes a waste and unreasonable use of water and/or whether
2 that water resource is being put to reasonable and beneficial use. (*See Los Angeles Waterkeeper*
3 *v. State Water Resources Control Board, et al.*, No. BS171011, Superior Court of California,
4 Verified Petition for Writ of Mandate (Sept. 26, 2017).) The Court consolidated the Tillman
5 petition with three other petitions filed by LA Waterkeeper regarding the other three POTWs in
6 the North Outfall Sewer System.

7 On August 4, 2020, the Los Angeles Superior Court held a trial and granted LA
8 Waterkeeper’s petition for writ of mandate against the State Board. The Court found that the
9 State Board has a mandatory constitutional and statutory duty to determine whether wastewater
10 discharges from publicly-owned treatment plants in the North Outfall Sewer System result in
11 waste and unreasonable use of water, pursuant to California Constitution Article X, Section 2
12 and Water Code section 100. (*Los Angeles Waterkeeper v. State Water Resources Control Board,*
13 *et al.*, No. BS171009, Superior Court of California, Decision on Petition for Writ of Mandate
14 (Aug. 4, 2020) (“Superior Court Writ Order”).)²

15 On October 17, 2022, the Regional Board released its Notice of Public Hearing on the
16 draft of the Permit notifying Petitioner (and the general public) that the public comment period
17 was open. On November 9, 2022, LA Waterkeeper and Heal the Bay submitted joint written
18 comments to the Regional Board explaining that if the Permit were adopted without
19 consideration of whether the current discharges from Tillman were a reasonable and beneficial
20 use of a water resource in California, or adopted without conditions requiring additional
21 recycling, the Permit likely would allow a waste and unreasonable use of a water resource. (*See*
22 *Exhibit D, Joint Comment Letter.*) LA Waterkeeper also submitted a separate comment letter on
23 November 9, 2022, explaining that cumulative impacts needed to be analyzed, and findings
24 included for those portions of CEQA that are applicable to NPDES permits. (*Exhibit E, CEQA*
25 *Comment Letter, at pp. 2-3.*)

26 On December 1, 2022, the Regional Board responded: “The question of what the water
27 boards ‘must’ do with respect to waste and unreasonable use is the subject of ongoing litigation.”

28 ² The State Board has appealed the Court’s decision, and the appeal is pending as of the date of this Petition.

1 (Exhibit B at p. 49.) The Regional Board asserted that it “strongly encourages water recycling,
2 water conservation, and use of stormwater and dry-weather urban runoff” consistent with State
3 Board and Regional Board policies. (Exhibit B at pp. 49-50.) Without conducting a formal
4 analysis, the Regional Board concluded:

5 [T]he recycled water discharged from the Tillman WRP provides habitat along the Los
6 Angeles River and maintains flow in the river to support other beneficial uses. So,
7 although the effluent is discharged to the Los Angeles River, the discharge is not
8 considered a waste and unreasonable use of water since it is providing a benefit to the
9 environment and neighboring communities.

10 (Exhibit B at p. 50.)

11 During a hearing on the Permit held on December 8, 2022, Petitioner testified before the
12 Regional Board and again objected to the lack of an analysis of waste and unreasonable use and
13 cumulative impacts in the Permit, replying to the staff response to its comments. The Regional
14 Board declined to discuss the matter publicly during the hearing due to pending litigation and
15 adopted the Permit on December 8, without making revisions to the Permit to address
16 Petitioner’s comments.³

17 **B. The Regional Board Prejudicially Abused Its Discretion by Adopting the**
18 **Permit Without Preventing and/or Considering Whether the Use of Treated**
19 **Wastewater at Tillman Is Wasteful and Unreasonable and Without**
20 **Considering Cumulative Impacts Associated with the City’s Integrated**
21 **Network of Treatment Plants**

22 The ongoing, unconsidered discharge of tertiary treated wastewater from Tillman to the
23 Los Angeles River and ultimately the Pacific Ocean, above the level necessary to support the
24 beneficial uses of the river,⁴ is an unconstitutional waste and unreasonable use of a water
25 resource in California. The Regional Board and/or the State Board have mandatory duties to
26 analyze whether the continued discharge of treated wastewater from Tillman is reasonable and
27 beneficial and not wasteful, and if waste and unreasonable use is found, to prevent such waste.
28 The Regional Board’s failure to execute those mandatory duties before adopting the Permit is a

³ On December 8, 2022, the Regional Board also adopted a WDR/NPDES permit for the Los Angeles-Glendale Water Reclamation Plant.

⁴ Beneficial uses of the Los Angeles River include habitat for aquatic life and vegetation adapted to, and perhaps even reliant on, seasonal periods of very low flow.

1 prejudicial abuse of discretion.

2 **i. All Water, Including Treated Wastewater from Tillman, Must Not Be**
3 **Wasted and Must Be Put to Reasonable and Beneficial Use**

4 As enshrined in the California Constitution and Water Code, *all* water in California must
5 not be wasted and must be put to reasonable and beneficial use. This reasonable and beneficial
6 use requirement applies to treated wastewater from Tillman just as it does surface and ground
7 water.

8 “It is hereby declared that because of the conditions prevailing in this State the general
9 welfare requires that *the water resources* of the State be put to beneficial use to the fullest extent
10 of which they are capable, and that the waste or unreasonable use or unreasonable method of use
11 of water be prevented.” (Cal. Const., Art. X, § 2 (emphasis added); *see also* Cal. Water Code
12 § 100.) This constitutional rule of reasonable and beneficial use applies to all types of water
13 resources. (*See, e.g., Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 138; *see also*
14 *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383; *Light v. State Water Res. Control Bd.*
15 (2014) 226 Cal.App.4th 1463, 1479.) Because of the conditions prevailing in California, and
16 specifically in Los Angeles, application of the constitutional requirement to all types of water
17 resources is sound policy. (*See Joslin*, 67 Cal.2d at 140-41; *see also* Exhibit D at pp. 1, 15.) In
18 fact, the California Supreme Court has determined that Article X, Section 2 applies to
19 wastewater reclamation and that the Water Code imposes a duty on the State Board to regulate
20 POTW discharges. (*See Environmental Defense Fund v. East Bay Municipal Utility District*
21 (1977) 20 Cal.3d 327, 343-44, *vacated on other grounds.*)

22 “It is hereby declared that the people of the state have a primary interest in the
23 development of facilities to recycle water containing waste to supplement existing surface and
24 underground water supplies and to assist in meeting the future water requirements of the state.”
25 (Cal. Water Code § 13510.) Recycled water “suitable for a direct beneficial use or a controlled
26 use that would otherwise not occur...is considered a valuable resource.” (Cal. Water Code
27 § 13050(n).) The Legislature recognized the broad applicability of the constitutional and
28 statutory mandates by declaring that under certain circumstances a failure to use available

1 recycled water—*i.e.*, reclaimed wastewater—is a waste and unreasonable use. (Cal. Water Code
2 § 13551 (“A person or public agency, including a state agency, city, county, city and county,
3 district, or any other political subdivision of the state, shall not use water from any source of
4 quality suitable for potable domestic use for nonpotable uses, including cemeteries, golf courses,
5 parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is
6 available as provided in Section 13550”).) And in 1991 the state set a water-recycling goal “to
7 recycle a total of 700,000 acre-feet of water per year by the year 2000 and 1,000,000 acre-feet of
8 water per year by the year 2010.” (Cal. Water Code § 13577.) As of 2022 that goal has not been
9 met.

10 The State Board’s Water Quality Control Policy for Recycled Water acknowledges that
11 the constitutional and statutory reasonable and beneficial use requirements apply to wastewater.⁵
12 And with respect to the management of wastewater—which originates from surface and/or
13 ground waters—it is state policy to have integrated management of water resources. (Cal. Water
14 Code § 174(b).) This integrated management depends on the coordination of water quality and
15 water supply analyses. (Cal. Water Code § 174(b).)

16 The California Constitution, Water Code, case law, and water management policy make
17 no distinction between the types of water resources in California that are subject to the rule of
18 reasonable and beneficial use. The treated wastewater discharged from Tillman is a “water
19 resource” in California. As a water resource, treated wastewater from Tillman must not be
20 wasted and must be put to reasonable and beneficial use.

21 **ii. The California Constitution and the Water Code Each Impose a**
22 **Mandatory Duty on the Regional Board and/or the State Board to**
23 **Prevent Waste and Unreasonable Use of California’s Water**
Resources

24 The California Constitution and Water Code impose mandatory duties on the Regional
25 Board and/or the State Board to prevent the unreasonable use and waste of the treated
26 wastewater discharging from Tillman directly and indirectly into the Los Angeles River and to

27 ⁵ See State Water Resources Control Board, Water Quality Control Policy for Recycled Water (eff. Apr. 8, 2019),
28 https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf, at p. 4.

1 consider whether that water resource is put to reasonable and beneficial use.

2 In relevant part, Article X, Section 2 of the California Constitution requires that: “the
3 waste or unreasonable use or unreasonable method of use of water be prevented.” Article X,
4 Section 2 is self-executing. (Cal. Const., Art. X, § 2; *see also Env’t Def. Fund, Inc. v. E. Bay*
5 *Mun. Util. Dist.* (1977) 20 Cal.3d 327, 341.) The plain language of this constitutional provision
6 creates a mandatory duty to prevent unreasonable use and waste. The word “prevented,” a verb
7 meaning “to stop (something) from happening or existing,” requires action. (Merriam-Webster
8 Dictionary (2016).) The cases construing Article X, Section 2 refer to this constitutional
9 provision as a “mandate.” (*See, e.g., City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th
10 1224, 1236; *Env’t Def. Fund, Inc.*, 20 Cal.3d at 341; *see also Elmore v. Imperial Irrigation Dist.*
11 (1984) 159 Cal.App.3d 185, 193–97 (citing Cal. Const. Art. X, § 2 as imposing mandatory
12 duties); *Imperial Irrigation Dist. v. State Water Res. Control Bd.* (1986) 186 Cal.App.3d 1160,
13 1170–71.) As applied in *Elmore*, the court held that petitioner had stated a cause of action to
14 compel the respondent irrigation district to prevent an ongoing waste of water because Article X,
15 Section 2 imposed a mandatory duty upon it to do so. (*Elmore*, 159 Cal.App.3d at 193–97.) As
16 such, *Elmore* holds that a responsible agency can be compelled to act to prevent a waste of water
17 pursuant to the duty established by Article X, Section 2. The constitutional mandate that
18 unreasonable use and waste be prevented is codified at Section 100 of the Water Code.

19 In addition, the Regional Board was required to fulfill the constitutional mandate against
20 waste of water pursuant to its duties under Section 13263 of the Water Code. When issuing
21 waste discharge requirements—as the Regional Board did here—the Regional Board:

22 shall implement any relevant water quality control plans that have been adopted, and
23 shall take into consideration the beneficial uses to be protected, the water quality
24 objectives reasonably required for that purpose, other waste discharges, the need to
prevent nuisance, and the provisions of Section 13241. (Cal. Water Code § 13263(a).)

25 Section 13241 requires the Regional Board to consider, among other things: “Water quality
26 conditions that could reasonably be achieved through the coordinated control of all factors which
27 affect water quality in the area,” and “[t]he need to develop and use recycled water.” (Cal. Water
28 Code §§ 13241(c), 13241(f).) As such, Water Code Sections 13263 and 13241 together required

1 the Regional Board to consider the need to develop and use recycled water. These sections of the
2 Water Code also required the Regional Board to consider matters of water supply, given that
3 water quality and water quantity issues are integrated in California and water quantity is a factor
4 that affects water quality. (*See* Cal. Water Code § 174(b); *see also PUD No. 1 v. Wash. Dept. of*
5 *Ecology* (1994) 511 U.S. 700, 719–20.) The Regional Board failed to consider these required
6 elements before it adopted the Permit and Order, however, thus violating the Water Code.

7 The Regional Board and/or State Board have mandatory duties to ensure treated
8 wastewater from Tillman is not wasted and to consider whether it is being put to reasonable and
9 beneficial use.

10 **iii. A Recent Superior Court Decision Confirms the Water Boards’ Duty**

11 In Petitioner’s legal challenge over the 2017 permits for the POTWs in the North Outfall
12 Sewer System, the Los Angeles Superior Court held that Article X, Section 2 and the Water
13 Code impose mandatory duties on the Regional Board and/or the State Board to prevent waste
14 and unreasonable use as part of the WDR/NPDES permits. (*Los Angeles Waterkeeper v. State*
15 *Water Resources Control Board, et al.*, No. BS171009, Superior Court of California, Decision
16 on Petition for Writ of Mandate (Aug. 4, 2020) (“Superior Court Writ Order”).) The Court found
17 that Article X, Section 2 applies to wastewater reclamation and imposes a duty on the State
18 Board to prevent waste and unreasonable use in POTW discharges. (*See* Superior Court Writ
19 Order at pp. 17-18 (citing *Environmental Defense Fund*, 20 Cal.3d 327 at 343-44); *id.* at p. 35.)
20 Based on the scale of the discharges from the North Outfall Sewer System, the Court found that
21 the Regional Board’s issuance of permits for the POTWs triggered the State Board’s affirmative
22 duty to prevent waste. (*See* Superior Court Writ Order at pp. 37-38.) Therefore, the Court
23 compelled the State Board to analyze whether those POTW discharges are wasteful and
24 unreasonable, and if so, exercise its discretion to prevent waste and unreasonable use. (*See*
25 Superior Court Writ Order at pp. 22-23, 39-41.)⁶

26 The Court’s reasoning applies equally to both the Regional Board and/or the State Board,
27

28 ⁶ The State Board has appealed the Court’s decision, and the appeal is pending as of the date of this Petition.

1 as each is a regulatory agency with authority over the Permit and Order. (*See* Cal. Water Code
2 §§ 13263(a), 13263(f).)⁷ The Court found that the Regional Board has the same constitutional
3 and statutory duties to prevent waste as the State Board. (*Los Angeles Waterkeeper v. State*
4 *Water Resources Control Board, et al.*, No. BS171009, Superior Court of California, Decision
5 on Petition for Writ of Mandate (Sept. 6, 2019), at p. 31.) In other words, while the State Board
6 is the state agency in charge of the comprehensive planning and allocation of water statewide
7 and shares a role in fulfilling the constitutional mandate (*Ibid.*; *see also* Cal. Water Code
8 §§ 174(a), 179), the Regional Board may not avoid its mandatory duties by pointing to the State
9 Board. In fact, Section 13225(a) of the California Water Code contemplates that the Regional
10 Board will work with the State Board when necessary. Nor may the State Board abdicate its
11 mandatory duties triggered by the adoption of the Permit by pointing to the Regional Board. (*See*
12 Water Code §§ 174(b), 13528.5 (providing that the State Board “may carry out the duties and
13 authority granted” to the Regional Board over recycled water); *see also Env’t Defense Fund,*
14 *Inc.*, 20 Cal.3d at 343-44 (describing the administrative agency responsibility over reclaimed
15 wastewater).) How the State Board and/or the Regional Board must implement their joint
16 mandatory duties is a question for the agencies to decide together. (*American Federation of*
17 *State, County & Municipal Employees v. Metropolitan Water District* (2005) 126 Cal.App.4th
18 247, 261; *Los Angeles County Employees Association, Local 660 v. County of Los Angeles*
19 (1973) 33 Cal.App.3d 1, 8.)

20 **iv. The Regional Board Failed to Execute Its Constitutional and**
21 **Statutory Mandatory Duties When It Authorized the Ongoing**
22 **Discharge of Treated Wastewater from Tillman**

23 When the Regional Board adopted the Permit, the Regional Board authorized the ongoing
24 discharge of tertiary treated wastewater from Tillman directly and indirectly into the Los
25 Angeles River. That authorization triggered the Regional Board’s Constitutional and statutory
26 duties to prevent waste and unreasonable use of that wastewater and/or consider whether the
27 continued discharge of tertiary treated wastewater from Tillman to the Los Angeles River and

28 ⁷ Petitioner has appealed the Court’s decision to dismiss the Regional Board as a party, and the appeal is pending as of the date of this Petition.

1 ultimately the Pacific Ocean is a reasonable and beneficial use of a water resource. The Regional
2 Board entirely failed to execute those duties prior to adopting the Permit, however, violating the
3 Superior Court Writ Order. And the Regional Board’s refusal to review the loss of reusable water
4 via continued discharges from Tillman represents an ongoing failure by the Board to integrate its
5 regulation of wastewater discharges and recycled water in the Los Angeles area.

6 Specifically, Tillman discharges between 30 MGD and 64 MGD of treated wastewater,
7 and about 20 MGD is discharged directly into the Los Angeles River. (*See* Exhibit A at pp. F-40,
8 F-68.) Because native flora and fauna are generally adapted to seasonal periods of extremely low
9 flow, maintaining artificially high base flows in the Los Angeles River may actually *obstruct*
10 some of the beneficial uses of the river. In other words, continued discharge of treated
11 wastewater from Tillman at current levels may not be necessary to support some beneficial uses
12 of the river adapted to low flow conditions and may, in fact, be more ecologically harmful than
13 helpful. Thus, discharging millions of gallons of highly treated wastewater every day from
14 Tillman rather than recycling it likely constitutes an unconstitutional waste of water and an
15 unreasonable use of a water resource. (*Joslin.*, 67 Cal.2d at 140–41; *Tulare Irrigation Dist. v.*
16 *Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 568; *see also Imperial Irrigation Dist.*
17 *v. State Water Res. Control Bd.* (1990) 225 Cal.App.3d 548, 568–69 (affirming that allowing
18 irrigation return flows to discharge into the Salton Sea was an unconstitutional waste of water);
19 *Light v. State Water Res. Control Bd.* (2014) 226 Cal.App.4th 1463, 1479–80; Cal. Water Code
20 § 13551.)

21 The State Board has developed several factors relevant to determining whether a water
22 use is wasteful and/or unreasonable, including: (1) other potential beneficial uses for conserved
23 water, (2) whether the excess water now serves a reasonable and beneficial purpose, (3) the
24 probable benefits of water savings, (4) the amount of water reasonably required for current use,
25 (5) amount and reasonableness of the cost of saving water, (6) whether the required method of
26 saving water are conventional and reasonable rather than extraordinary, and (7) the availability
27 of a physical plan or solution. (*See, e.g., Imperial Irrigation Dist., Water Rights Decision 1600,*
28 *at 23–29* (Cal. State Water Res. Control Bd. June 21, 1984).) Application of the State Board’s

1 own criteria confirms that the ongoing discharge of treated wastewater from Tillman likely
2 constitutes a waste and unreasonable use of that water resource:

- 3 1. Recycling conserved water above levels needed to support beneficial uses in the Los
4 Angeles River (some stretches of which have adapted to seasonal periods of very low
5 flow) is likely to be superior to discharging tertiary treated wastewater into the Los
6 Angeles River and eventually the Pacific Ocean.⁸
- 7 2. The excess water is not currently being put to a reasonable or beneficial use.
- 8 3. There are numerous probable benefits of water savings, including reduced reliance on
9 imported water and reduced energy consumption,⁹ and will help the City achieve its
10 laudable goal to increase use of recycled water.¹⁰
- 11 4. The need to determine this quantity of water, which has major implications for both
12 preserving and restoring ecological functions of the Los Angeles River and protecting
13 recreational uses of the river, underscores the need to conduct a waste and
14 unreasonable use analysis.
- 15 5. The cost of saving water would likely be lower than the costs of other water supply
16 sources such as desalination and importing water from sources such as the Colorado
17 River, the Bay Delta, and/or the Owens Valley.

18
19 ⁸ The process of obtaining water rights under Water Code Section 1211, a process overseen by the State Board,
20 could be used to analyze questions regarding what base flow in the river is ecologically optimal and what base flow
21 would allow enjoyment of other designated beneficial uses. The Tillman operators will need to apply for Section
22 1211 water rights in order to alter their permitted discharge to the Los Angeles River. However, the lack of a Section
23 1211 analysis at present does not excuse the lack of analysis and/or findings in the WDR/NPDES Permit/Order
24 regarding beneficial uses, waste and unreasonable uses, cumulative impacts, or CEQA policies.

⁹ U.C. Davis researchers found that between June 2015 and February 2016, when statewide water conservation
measures were in place, California’s water conservation rate of 23.9 percent over 2013 levels resulted in energy
savings that translated into a reduction in greenhouse gas emissions of 219,653 metric tons. Tara Lohan, *Water
Conservation Saves Energy in California*, KQED SCIENCE (June 9, 2016),
<https://ww2.kqed.org/science/2016/06/09/water-conservation-saves-energy-in-california/>.

¹⁰ See City of Los Angeles, 2019 Sustainable City pLAN,
https://plan.lamayor.org/sites/default/files/pLAN_2019_final.pdf, at pp. 46-47 (identifying a target for Los Angeles
Department of Water and Power to reduce water imports by 50% and to recycle 100% of all wastewater for
beneficial reuse by 2035, “including but not limited to non-potable reuse, groundwater recharge, and supporting
environmental and recreational uses such as those in the L.A. River”); L.A. Dep’t of Water & Power, 2020 Urban
Water Management Plan,
<https://www.ladwp.com/cs/groups/ladwp/documents/pdf/mdaw/nzyy/~edisp/opladwpccb762836.pdf>, at pp. 7-1-7-
10 (discussing wastewater recycling efforts and initiatives at Hyperion and other POTWs in the Los Angeles
metropolitan area, including beneficial uses associated with recycled wastewater).

1 6. The technology to put the treated wastewater Tillman currently discharges to other
2 beneficial uses currently exists, and the City is planning to expand such uses from
3 Tillman and other POTWs in the North Outfall Sewer System, which suggests there is
4 nothing extraordinary about such methods of saving water.

5 7. Lastly, a physical plan or solution is available as demonstrated by the fact that
6 Tillman already provides some treated wastewater to several lakes in the Sepulveda
7 Basin and to several other uses, and the City is planning to implement large-scale
8 reclamation projects involving additional large quantities of treated wastewater from
9 Tillman.

10 Moreover, continuing to discharge highly treated wastewater into the Los Angeles River
11 and ultimately the Pacific Ocean—at a discharge point located over a groundwater basin well-
12 suited to serve as a source of local water supply—does nothing to advance California’s goal to
13 increase the amount of water recycled in the state. (*See* Cal. Water Code § 13577.) Indeed,
14 California is far from meeting its previous goal of recycling 1,000,000 AFY by 2010, or the State
15 Board’s goal of 1,500,000 AFY by 2020, with only around 732,000 AFY of water recycled in
16 2021.¹¹ Tillman and its integrated network of POTWs in the North Outfall Sewer System are part
17 of the “pump and dump” system where large volumes of water are transported from Northern
18 California and the Colorado River watershed, used once, treated, then discharged directly and
19 indirectly into the Los Angeles River and ultimately the Pacific Ocean. The ongoing loss of this
20 valuable water resource perpetuates California’s current unsustainable water supply
21 management, and contributes to the instability of water supply and water quality issues in the
22 Los Angeles area, an area in dire need of local, reliable, and climate-friendly water sources.

23 Recognizing this need, the City is now taking important steps to plan for a sustainable
24 water supply and address the drought conditions. Both the City and the Regional Board

26 ¹¹ *See* State Water Resources Control Board, Water Quality Control Policy for Recycled Water (eff. Apr. 8, 2019),
27 [https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf)
28 [.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf), at p. 2; *see also* State Water Resources Control Board, Volumetric Annual Reporting of Wastewater and
Recycled Water 2021 Calendar Year Results,
[https://www.waterboards.ca.gov/water_issues/programs/recycled_water/docs/2022/volumetric-infographic-](https://www.waterboards.ca.gov/water_issues/programs/recycled_water/docs/2022/volumetric-infographic-2021.pdf)
[2021.pdf](https://www.waterboards.ca.gov/water_issues/programs/recycled_water/docs/2022/volumetric-infographic-2021.pdf), at p. 4.

1 acknowledge that there is additional capacity to reclaim water at Tillman without impacting
2 beneficial uses in the Los Angeles River, along with additional reclamation capacity within the
3 North Outfall Sewer System as a whole, and therefore an opportunity to reduce the cumulative
4 amount discharged into the ocean. Yet the Regional Board refuses to even consider the
5 reasonableness of losing millions of gallons of reusable water to the ocean daily, let alone take
6 steps to abate that waste.

7 The Permit likely authorizes a waste and unreasonable use of a water resource in
8 California. The Regional Board has constitutional and statutory duties to prevent that waste and
9 unreasonable use and/or consider whether, as authorized by the Permit, it is reasonable and
10 beneficial. Because the Regional Board entirely failed to execute these duties during the
11 permitting process, the Regional Board prejudicially abused its discretion.¹²

12 **v. The Regional Board Failed to Execute its Mandatory Duties when It Failed to**
13 **Consider Cumulative Impacts or Make Findings Regarding Chapter 1 of the**
14 **California Environmental Quality Act**

15 There are cumulative impacts resulting from the Board’s approval of the Permit that the
16 Regional Board was required, but failed, to consider. Assessing the North Outfall Sewer System
17 as a whole, there is the potential additional, cumulative reclamation capability of significant
18 quantities of water within the Los Angeles River watershed, while preserving minimum flows for
19 ecological health in the river. (*See* Exhibit D at pp. 11-12; Exhibit E at pp. 2-3.) Taking full
20 advantage of the reclamation potential from this integrated network of treatment plants, while
21 also providing for base flows that protect the beneficial uses of the river, could put the Los
22 Angeles area well along the road to water self-sufficiency. The Regional Board failed to consider
23 these cumulative impacts related to the recently adopted WDRs/NPDES permits for Tillman and
24 LA-Glendale, despite the Regional Board’s recognition that those treatment plants constitute part
25 of an “integrated network.” (Exhibit A at p. F-4.)

26 In addition, the Regional Board failed to make findings that the projects are consistent

27 _____
28 ¹² Alternatively, the renewal of the Permit triggered the State Board’s duties to prevent the waste and unreasonable
use of a water resource and/or consider whether the use of that water resource authorized by the Permit was
reasonable and beneficial. As such, Petitioner now requests that the State Board take steps to execute these duties.

1 with the CEQA Chapter 1 policies, even though the Regional Board implicitly recognizes that it
2 must consider those policies notwithstanding the partial exemption in Water Code Section 13389
3 limited to Chapter 3 of CEQA. (Exhibit B at p. 52 (“Under California Water Code section 13389,
4 the action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of
5 CEQA . . .”).) The Regional Board’s response to comments failed to adequately address
6 Petitioner’s cumulative impacts comments, as the Regional Board mistook Petitioner’s
7 comments for a request for CEQA *analysis*. Petitioner did not, and does not, ask the Regional
8 Board to conduct a full (or even partial) CEQA analysis. There are other processes the Regional
9 Board can and must use to develop the information necessary to demonstrate the Permit approval
10 meets the requirements of Chapter 1 of CEQA. Accordingly, at a minimum, the Permit approval
11 must include CEQA *findings* supported by substantial evidence in the record regarding the
12 cumulative impacts of the integrated network and feasible alternatives or feasible mitigation
13 measures that would substantially lessen the significant environmental effects resulting from the
14 ongoing discharge of treated wastewater from this integrated network of treatment plants, as well
15 as from individual facilities. (Exhibit E at pp. 4-6.) Those findings are not included in the Permit
16 approved by the Regional Board.

17 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**
18 **APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGER, IF NOT**
19 **THE PETITIONER**

20 A true and correct copy of this Petition was delivered by electronic mail to the State
21 Board, Regional Board, and the City of Los Angeles Departments of Sanitation and Public
22 Works on January 6, 2023.

23 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**
24 **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**
25 **BOARD, OR AN EXPLANATION OF WHY THE PETITIONER WAS NOT**
26 **REQUIRED OR WAS UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR**
27 **OBJECTIONS BEFORE THE REGIONAL BOARD**

28 All of the substantive issues and objections raised herein were presented to the Regional
Board in writing by letters dated November 9, 2022 (*see* Exhibit D and Exhibit E) and in follow-
up testimony before the Regional Board on December 8, 2022.

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Respectfully submitted via electronic mail,

Dated: January 6, 2023

LOS ANGELES WATERKEEPER



Benjamin Harris
Attorney for LOS ANGELES WATERKEEPER

Dated: January 6, 2023

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